

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Miskovski	Team: Squad #14	CCRB Case #: 202006881	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 10/02/2020 2:45 AM	Location of Incident: 78th Precinct stationhouse	Precinct: 78	18 Mo. SOL 4/2/2022	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 10/02/2020 8:44 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/15/2020 11:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Bracco	08029	963410	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alec Solomito	03561	964782	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Bracco	Force: Police Officer Christophe Bracco used physical force against § 87(2)(b)	
B.POM Christopher Bracco	Force: Police Officer Christophe Bracco used physical force against § 87(2)(b)	
C.POM Christopher Bracco	Force: Police Officer Christophe Bracco hit § 87(2)(b) against a bench.	
D.POM Christopher Bracco	Discourtesy: Police Officer Christophe Bracco spoke discourteously to § 87(2)(b)	

Case Summary

On October 2, 2020, Sergeant Richard Polanco of the 75th Precinct filed this complaint with IAB on behalf of § 87(2)(b) who received medical treatment at § 87(2)(b). The CCRB received this complaint on October 15, 2020.

On October 2, 2020, Police Officer Alec Solomito and Police Officer Christopher Bracco, both of the 75th Precinct, transported § 87(2)(b) who was already arrested and in police custody, to the 78th Precinct stationhouse for the Intoxicated Driving Testing Unit (IDTU) (BR 01). While lodging him in the cells at the stationhouse, PO Bracco informed § 87(2)(b) that he would have to remove his necklace and § 87(2)(b) refused. PO Bracco then attempted to remove the necklace and PO Bracco pushed § 87(2)(b) at his chest (**Allegation A: Force**, § 87(2)(g)). PO Bracco then pushed § 87(2)(b) onto a holding cell bench and pushed on his head to remove the necklace (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) stood back up and pushed away PO Solomito's hands, and PO Bracco pushed § 87(2)(b) back against the bench and held § 87(2)(b) while he handcuffed him to the bench (**Allegation C: Force**, § 87(2)(g)). Throughout the physical struggle, PO Bracco used the word "fuck" and "shit" and phrases such as, "Are you out of your fucking mind?" and, "Are you fucking serious? One simple fucking task and you can't even follow that!" (**Allegation D: Discourtesy**, § 87(2)(g)).

§ 87(2)(b) was transported to § 87(2)(b) for treatment, where doctors diagnosed § 87(2)(b) with a partially collapsed lung.

§ 87(2)(b)

The CCRB received body-worn camera (BWC) footage from PO Bracco, PO Solomito, Sergeant Daniel Berardi, Police Officer Joseph Vigiano, Police Officer Anthony Varrone, Police Officer Vincent Peluso, Police Officer Andre O'Hara, Police Officer Matthew McCurry, all of the 75th Precinct (BR 03), as well as surveillance footage from the 78th Precinct stationhouse. The relevant aspects are discussed in further detail below.

Findings and Recommendations

Allegation (A) Force: Police Officer Christophe Bracco used physical force against § 87(2)(b).

Allegation (B) Force: Police Officer Christophe Bracco used physical force against § 87(2)(b).

Allegation (C) Force: Police Officer Christophe Bracco hit § 87(2)(b) against a bench.

Allegation (D) Discourtesy: Police Officer Christophe Bracco spoke discourteously to § 87(2)(b).

The investigation was unable to contact § 87(2)(b) despite numerous attempts to do so (see BR 07 for the summary of contact attempts). The investigation commenced based on video evidence and the allegations of serious injury (partially collapsed lung) reported in the IAB log (Board Review 21).

The stationhouse video footage, contained in IA#12, shows the entirety of the interaction without audio from 14:12 to 16:43 (BR 06). At 14:12, § 87(2)(b), PO Solomito, and PO Bracco enter the cell area, and the officers remove the handcuffs from § 87(2)(b). § 87(2)(b) begins to take off his shoes and clothing. At 15:18, § 87(2)(b) gestures to his necklace and shakes his head in a "no" motion. At 15:21, PO Bracco leans into § 87(2)(b) and attempts to unclasp the necklace from the back of § 87(2)(b) neck. § 87(2)(b) immediately stands and grabs PO Bracco's left arm and moves to twist it out of the way. PO Bracco grabs § 87(2)(b) chest and pushes him with two hands in a downward motion. § 87(2)(b) falls backwards and hits his back against the wall. PO Bracco continues to hold § 87(2)(b) chest and pulls him away from the wall and pushes § 87(2)(b) back-first, onto the seat of the bench. PO Solomito reaches out and holds § 87(2)(b).

right arm as PO Bracco retrieves his handcuffs. At 15:36, a third officer enters the cell area and PO Bracco handcuffs § 87(2)(b) right arm to the bench armrest. PO Bracco then attempts to remove the necklace. At 15:50, PO Bracco pushes § 87(2)(b) head down and removes the necklace. § 87(2)(b) stands up again and PO Bracco reaches down to grab something. § 87(2)(b) swings his arm toward PO Solomito and pushes PO Solomito in the chest as PO Solomito grabs § 87(2)(b) arm. PO Bracco finishes, stands up, turns to § 87(2)(b) grabs his chest and pushes him down against the bench. At 16:04, PO Bracco handcuffs § 87(2)(b) left arm to the back of the bench. The officers and § 87(2)(b) then continue the processing and place § 87(2)(b) into the cells at the 25:00 mark. At 39:14, the officers remove § 87(2)(b) from the cells.

PO Bracco's BWC footage, contained in IA#77, shows the physical interaction from 22:23 to 23:40 (**BR 05**). At 22:23, the officers enter the cell area with § 87(2)(b) and remove his handcuffs. PO Bracco instructs § 87(2)(b) to remove his shoes and belt. § 87(2)(b) agrees and removes his items. PO Bracco tells § 87(2)(b) that he has to remove his chain. § 87(2)(b) tells the officers that he is not removing it. At 23:21, PO Bracco walks up to § 87(2)(b) and attempts to touch the necklace. § 87(2)(b) stands up and shouts, "Bro don't do that to—" At 23:24, PO Bracco leans in too close to § 87(2)(b) for the frames to be visible. A bang can be heard and § 87(2)(b) says, "Ow!" At 23:25, PO Bracco pushes § 87(2)(b) onto the bench and shouts, "Won't give me your fucking...get the fuck off. Are you out of your fucking mind?" § 87(2)(b) shouts that he did nothing wrong. PO Bracco handcuffs § 87(2)(b) right hand to the bench while saying, "Put your fucking hands on me like that." At 23:47, PO Bracco pushes § 87(2)(b) head down, causing § 87(2)(b) to shout, "Ack!" PO Bracco instructs § 87(2)(b) to stop and removed the necklace. § 87(2)(b) shouts louder and says, "Y'all bugging now!" and stands up, swinging his arm. PO Bracco turns away and places the necklace on the floor. He turns back to § 87(2)(b) grabs his arm and chest, and pushes him onto the bench, shouting, "Sit the fuck down! Sit down!" § 87(2)(b) shouts, "Don't touch me!" and tries to free his left arm out of PO Bracco's grasp. PO Bracco grabs it and handcuffs it to the bench. At 24:16, § 87(2)(b) asks the officers, "Are you fucking serious?" PO Bracco responds, "Are you fucking serious? One simple fucking task and you can't even follow that." At 24:23, § 87(2)(b) tells the officers that they "ripped my fucking chain off my neck." PO Bracco responds, "I didn't do shit." PO Bracco continues, "I tell you this [necklace] is coming off and you say no and you fucking touch me like that. Guess what? I broke it? Look at this. This is how little you know of what is going on. It's not fucking broken. You're getting it back." § 87(2)(b) calms down and the officers tells § 87(2)(b) they can call him an ambulance if he is hurt. § 87(2)(b) refuses.

Later in PO Bracco's BWC footage, contained in IA #77, § 87(2)(b) tells the officers that his ribs hurt (**BR 05**). From 28:32 to 31:12, § 87(2)(b) says, "My ribs though. I was in like a bad accident two days ago. I wasn't even driving. I got hit by somebody." § 87(2)(b) explains that he was walking. § 87(2)(b) shows his ribs and says he, in reference to the collision, "got fucked up real [sic] bad." § 87(2)(b) says that he wants to lie down because his ribs hurt and feel broken. The officers allow § 87(2)(b) to lie down in the cells.

Threat, Resistance and Injury (TRI) report § 87(2)(b) stated that PO Bracco used wrestling and grappling to overcome active resistance and force (**BR 08-09**) and further stated that § 87(2)(b) complained of pain and had a partially collapsed lung. Officers removed § 87(2)(b) to § 87(2)(b) where § 87(2)(b) conducted a CAT scan and found a partially collapsed lung that required admittance. The TRI noted that it is unknown if the lung injury is due to PO Bracco's force or the vehicular collision that § 87(2)(b) alleged.

PO Bracco admitted to the force and the discourtesies found in the BWC footage and stationhouse footage when he tried to remove § 87(2)(b) necklace (**BR 10**). To PO Bracco's knowledge, the necklace could not remain, no matter what the reason because it was a safety hazard. PO Bracco stated that he used force because § 87(2)(b) had quickly changed his demeanor and behavior from compliant to defensive resistance when he swatted away PO Bracco's hand and stood up to face him. PO Bracco did not know what § 87(2)(b) was going to do next, so he

grabbed § 87(2)(b) at the upper parts of his arms near his shoulders and attempted to push him down into the bench at a position that his legs would bend, so that § 87(2)(b) would be pushed into a sitting position. For some reason unknown to PO Bracco, § 87(2)(b) did not go down onto the bench, and the force of the push brought § 87(2)(b) against the wall. PO Bracco believed that this was due to § 87(2)(b) pushing back against PO Bracco's attempt to put him on the bench. Regarding the subsequent pushes onto the bench, PO Bracco noted that he wanted to get § 87(2)(b) on the bench as quickly and efficiently as possible because he did not understand why § 87(2)(b) had suddenly become uncooperative. PO Bracco believed that § 87(2)(b) could have possibly tried to fight the officers, so PO Bracco wanted to keep § 87(2)(b) contained as quickly as possible with the minimum force. PO Bracco noted that he used the word fuck to increase the severity of his language and elevate the aggressive language to make § 87(2)(b) comply. He wanted to ensure that § 87(2)(b) knew that PO Bracco was not "playing around." PO Bracco clarified that he used the discourteous language to match § 87(2)(b) escalation of the incident.

NYPD Patrol Guide Procedure 221-01 states that officers must use "only the reasonable force necessary to gain control or custody of a subject," (BR 12). It further adds that, "In determining whether the use of force is reasonable, members of the service should consider the following: nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the number of MOS; size, age, and condition of the subject in comparison to the MOS; subject's violent history; presence of hostile crowd; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence." NYPD Patrol Guide Procedure 221-02 instructs officers to "apply no more than the reasonable force necessary to gain control" (BR 13).

Patrol Guide Procedure No. 200-02 (BR 11) states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others.

As discussed in DCT Case Number 2017-17005 (BR 14), the NYPD has held that otherwise discourteous statements that are made when an officer is engaged in a stressful situation or trying to get a chaotic situation under control are not misconduct. However, the NYPD has circumscribed that exception to situations that are so chaotic that the immediate need to maintain order overrides the duty of courteous and professional behavior. Under DCT Case Number 2015-15012 (BR 15), discourteous language may be excusable when an officer is speaking in the context of a dynamic situation over which he is still attempting to gain control. However, discourteous statements are prohibited when they serve no legitimate purpose but to belittle the civilian.

As shown in the BWC footage and within the TRI reports, § 87(2)(b) reported that he was the victim of a vehicular collision that caused him rib pain. As such, the investigation is unable to determine if PO Bracco's force caused the partially collapsed lung or merely exacerbated it.

As shown in the footage, § 87(2)(b) was compliant until the point he had to remove his necklace. § 87(2)(g) stationhouse footage showed § 87(2)(b) began to resist PO Bracco by reaching up to grab PO Bracco's arm, the investigation found that the subsequent push by PO Bracco merely seconds later, which moved § 87(2)(b) several feet away into the wall, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Subsequently, though PO Bracco testified that the final two pushes against the bench and the push of § 87(2)(b) head served to regain control of § 87(2)(b) in consideration of several other factors, such as the fact § 87(2)(b) was already in highly controlled and secured setting (police custody in the holding cell area) and thus unlikely to be armed or able to flee, and PO Bracco was in the presence of one to two additional uniformed officers throughout this aspect of the incident should further assistance have been required, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- PO Bracco has been a member of service for four years and has been a subject in three other CCRB complaints and 16 allegations, of which four were § 87(2)(g)
○ § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mediation, Civil, and Criminal Histories

- [illegible]

Squad: 14

Investigator:	<u>Michael Miskovski</u>	<u>Inv. Michael Miskovski</u>	<u>03/29/2022</u>
	Signature	Print Title & Name	Date

Squad Leader: <u>Cassandra Fenkel</u>	<u>IM Cassandra Fenkel</u>	<u>04/11/2022</u>
Signature	Print Title & Name	Date

Reviewer:

Signature

Print Title & Name

Date